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Defendant DOE 1 Mendelson Entertainment Group, LLC,
incorrectly sued as Mendelson Entertainment Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

OKSANA BAIUL-FARINA,
professionally known as
OKSANA BAIUL, an individual,
and OKSANA, LTD,
a Pennsylvania Corporation

Plaintiffs

vs.

NBC SPORTS, a division of NBC
UNIVERSAL MEDIA LLC, a
Delaware limited liability company;
ON ICE, INC., a California corporation;
BARRY MENDELSON, an individual;
DOES 1-10

Defendants.

Case No. 2:15-CV-05163-DDP-MRW

Defendant Barry Mendelson's and
Defendant Doe 1 Mendelson
Entertainment Group LLC's
Supplemental Memorandum Of Points
And Authorities In Support Of Motion
To Dismiss Plaintiff's Second Amended
Complaint For Failure To State A Claim

[Pursuant to Fed. R. Civ. P. 12(b)(6)]

*[Submitted Concurrently With
Notice of Joinder; and Filing
Supplemental Memorandum of Points
and Authorities; Proposed Order]*

Date: April 11, 2016
Time: 10:00 a.m.
Location: Courtroom 3

Removed: July 8, 2015
Trial Date: None Set

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SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES

In addition to joining in NBC Universal's ("NBC") Motion to Dismiss and its Request for Judicial Notice, Defendant Mendelson and Doe 1 Mendelson Entertainment Group, LLC ("MEG") make the following additional arguments.

1. Plaintiff's Lawsuit Should Be Dismissed With Prejudice As To Mendelson and MEG.

Plaintiff has abused the judicial process from coast to coast. This lawsuit is her third attempt in this particular California litigation which follows on the heels of her unsuccessful litigation on the same primary right in the New York State and Federal Courts.¹ Among the myriad lawsuits that Baiul has filed in recent years - all of which have been dismissed - she previously filed a lawsuit against more than 20 individuals and entities arising from substantially similar allegations to those here. This Court found that suit to be frivolous and wholly without merit. It granted defendants' motion to dismiss on statute of limitations grounds. See Baiul v. William Morris Agency, LLC No. 13 Civ. 8683(KBF), 2014 WL 1804526 (S.D.N.Y. May 6, 2014), *aff'd* 601 F. App'x 58 (2d Cir. 2015) (summary order).

Baiul also previously brought two related actions against NBC (among others) arising out of alleged commercial uses of Baiul's name and likeness relating to the same skating shows at issue here. This Court granted defendants' motion for summary judgment on those claims and awarded attorneys' fees to defendants. See Baiul v. NBCUniversal Media LLC Nos. 13 Civ. 2205 (KBF), 13

¹ Mendelson and MEG adopt NBC's recitation of the history of these related lawsuits.

1 Civ. 2208(KBF), 2014 WL 1651943 (S.D.N.Y. Apr. 24, 2014), aff'd 607 F.
2 App'x 99 (2d Cir. 2015) (summary order). [Katherine B. Forrest, United States
3 District Judge's September 16, 2015 Memorandum of Decision, 15-cv-2816
4 (KBF) at page 1]

5 Plaintiff Baiul escaped dismissal with prejudice in New York because the
6 cause of action which she had alleged in the New York Supreme Court, which
7 was the basis for the removal to the Federal District Court for Southern District of
8 New York, was so meritless that it failed to state a cause of action. Hence, it
9 would not support removal. Plaintiff had tried to allege violation of the
10 Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a et seq.

11 As Judge Forrest noted, only a well pled cause of action will support
12 removal, citing Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987) [*Forrest*
13 *Decision* at pages 7, 9] Baiul's cause of action for violation of the Immigration
14 Reform and Control Act of 1986 [*Forrest Decision* at page 3] failed to state any
15 cause of action, leaving the federal district court without jurisdiction to dismiss
16 the complaint with prejudice.

17 Plaintiff's Baiul had had her prior actions based upon the same primary
18 right dismissed as frivolous in one instance and dismissed on summary judgment
19 in another instance. [*Forrest Decision* at page 1] In the New York District Court,
20 Baiul was on her Third Amended Complaint, and in this court, she is on her
21 Second Amended Complaint. Baiul's new causes of action in the Second
22 Amended Complaint in this court is as defective as her IRCA cause of action was
23 in New York. [See *infra* and NBC's Motion to Dismiss]. Thus, in addition to the
24 prior lawsuits which the courts dismissed, Baiul is actually on her 7th Amended
25 Complaint. This lawsuit was filed in California after she had dismissed without

1 prejudice her lawsuit in the New York State Court. Thus, adding together those
2 amended complaints to the ones in California, we have seven attempts.

3 **2. Plaintiff's New Cause of Action for Breach of Implied in Fact Contract**
4 **Contradicts Her Other Factual Allegations**

5 Plaintiff attempts to make the factual allegation that she only recently
6 learned that she had a deal with defendants to be paid, but her implied-in-fact
7 contract is factually inconsistent with her claim of recent discovery. [SAC 5:11-
8 6:3] If there had been an implied-in-fact contract in 1993 or 1994, then Plaintiff
9 had to know about it. An implied-in-fact contract is a factual pleading of
10 Plaintiff's knowledge. Without knowledge, there could be no contract as there
11 could be no mutual assent.² Cal. Civil Code, §§ 1549, 1550(2)

12 The Implied-in-Fact Contract is barred for another reason. Plaintiff's new
13 facts are not facts, but merely a theory of recovery. There are not any new facts
14 which were concealed from her. Each of these theories has been rejected by the
15 courts and each theory is based on the same primary right.

16 The series of lawsuits by Plaintiff's attorneys show a conscious disregard
17 for proper pleading. Plaintiff's primary right has already been litigated and the
18 outcome has been against her. Allen v. McCurry (1980) 449 US 90, 99-101, 101
19 S.Ct. (1980) 411, 417-481, Hamilton v. Asbestos Corp. (2000) 22 Cal.4th 1127,
20 1146, 95 Cal.Rptr.2d 701.³ She may not now bring a new action based on the
21

22 ² The allegation that she entered into an implied-in-fact contract by fraud and
23 mistake is legal gibberish. [SAC 5:16-27]

24 ³ When state courts fail to provide a full and fair hearing, there may be an
25

1 same Primary Right against anyone.⁴

2 **3. Plaintiff Is Deceptive And Disingenuous In Her Pleadings**

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4 After multiple courts and at least seven renditions of her claim, Plaintiff
5 still cries that she was a poor minor without any protection. When Plaintiff
6 presents the mixed claims that she was a minor (FAC 4:8, SAC 3:13), which
7 would delay the date of majority for her to file a lawsuit in her own name, plus
8 delayed discovery, Plaintiff has a duty to be forthwith with the court about all the
9 relevant dates and other facts. As NBC points out its Motion to Dismiss, Plaintiff
10 has failed to plead the necessary facts. *NBC's Motion to Dismiss* at pages 11-12.
11 Thus, Mendelson and MEG will only discuss the failure to be forthright about her
12 age.

13 By alleging an implied-in-fact contract (Cal. Civil Code, § 1621), Plaintiff
14 is factually admitting that she knew about the alleged contract in 1994. Inherent
15 in the concept of a contract is mutual assent and mutual assent requires
16 knowledge. Thus, by alleging an implied-in-fact contract for payment for her

17
18 exception to allow litigation in federal court, but Plaintiff has failed to make any
19 such allegations against the California state courts. Peduto v City of Northwood,
20 (1989) 878 F.2d 725, 727.

21 ⁴ When a plaintiff sues, she has to assert all causes of action or lose the causes of
22 action which she omits. This rule is called the rule against splitting cause of
23 action. The California courts have a policy to prevent defendants from being
24 subjected to the same matter over & over because a plaintiff decides to assert her
25 causes of action in a serial manner. Wulfjen v. Dolton (1944) 24 Cal.2d 891,894-

1 1994 Performance, she knew in 1994. The contract could not come into existence
 2 after she had performed as past consideration is no consideration. Simmons v.
 3 Cal. Institute of Technology (1949) 34 Cal.2d 264, 272

4 Because Plaintiff fails to allege her birth date, the parties and the court are
 5 forced to use common knowledge and reason to determine that her statute of
 6 limitation ran years ago. As an Olympic gold medalist, Plaintiff was no less than
 7 13 years old in 1994 in order to star in the Nutcracker, which means she had to
 8 have reached her majority by 1999. The longest statute of limitations is three
 9 years, which means she had until 2002 to bring her claims.

10 **4. Summary**

11
 12 Plaintiff Baiul has had her day in court – again and again and again. Just as
 13 she dredges up inappropriate causes action, she had added inappropriate
 14 defendants, Mendelson and MEG.

15 **5. Conclusion**

16 Defendants Mendelson and MEG respectfully request that this Court
 17 dismiss **with prejudice** the complaint against Mendelson and MEG. Defendants
 18 also request that this Court not accept another voluntary dismissal from Plaintiff.
 19 If she should try that ploy again, Defendants request that the court reject it and
 20 instead dismiss the case **with prejudice**.

21 Dated: March 3, 2016

Edward W. Pilot, APC

22 By: /s/ Edward W. Pilot

Edward W. Pilot, Esq.

23 Attorney for Defendant Barry Mendelson, an
 24 individual and Defendant DOE 1 Mendelson
 25 Entertainment Group, LLC, incorrectly sued
 as Mendelson Entertainment Inc.